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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,320	07/05/2000	Isabelle Afriat	193022US0	3970

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EXAMINER
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BENNETT, RACHEL M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 05/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/610,320

Applicant(s)

AFRIAT ET AL.

Examiner

Rachel M. Bennett

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-21 and 23-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 1615

### **DETAILED ACTION**

Claims 1, 3-21, 23-26 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/4/02 has been entered.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 25 have open-ended numerical ranges, which make the claim indefinite. Claim 1 discloses, "the aqueous phase is present in at least 75% by weight", "the wax is present in at least 3% by weight" and "the composition comprises at least 70% water" and claim 25 discloses, "the wax is present in at least 5% by weight". It is suggested, applicants include an upper limit to overcome the rejection.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

Art Unit: 1615

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-4, 11-15, 18-21, 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellul et al. (US 5851539).

Mellul discloses water-in-oil emulsions that comprise fluorocarbon oils, water and a silicone surfactant (see abstract). The aqueous phase of the emulsion represents 10-90% by weight of the total formula of the emulsion (see col. 7 lines 50-52). Silicone surfactants disclosed include alkydimethicone copolyols, specifically "Q2 5200" (lauryl dimethicone copolyol). Other silicone compounds include alkoxymethylpolysiloxanes (see col. 7). These silicone surfactants are used in proportions of between 0.5 and 40% by weight relative to the weight of the emulsion. Additives, such as waxes, may be added to the composition and preferably do not exceed 50% by weight relative to the weight of the fatty continuous phase (see cols. 6 and 7). The continuous fatty phase may, in addition, contain screening agents, vitamins, hormones, antioxidants, preservatives, colorants, perfumes and any lipophilic additive customarily used in cosmetics (see col. 7 lines 46-49). The emulsions may be provided in the form of a milk, a cream for skin or hair care, anti-sun cream, foundation, lipstick, mascara or blusher (see col. 10 lines 37-45). Therefore, the cosmetic compositions prepared with these emulsions can be used for the treatment or care of the skin, the hair or the nails (see col. 10 lines 46-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the emulsion taught by Mellul in order to treat greasy skin because Mellul teaches the emulsion to be used to care for the skin and one would expect the emulsions

Art Unit: 1615

to treat greasy skin by preventing water loss and protecting the skin from external damage as skin emulsions are known to do in the art.

6. Claims 1, 3-15, 18-21, 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellul et al. (US 5851539), and further in view of Bara (US 5919468).

Mellul discloses water-in-oil emulsions that comprise fluorocarbon oils, water and a silicone surfactant (see abstract). Mellul does not disclose the silicone surfactant to be crosslinked elastomeric solid organopolysiloxane comprising at least one oxyethylene group.

Bara discloses the use of a partially crosslinked elastomeric solid organopolysiloxane in combination with a fatty phase for the preparation of a composition or in a composition for skin care or make-up for matting the skin. The cosmetic compositions are mild in application, easily spread, non-sticky and do not dry out the skin. They can be employed in particular for blurring out skin relief blemishes such as microreliefs, wrinkles or pores, while giving the skin a natural appearance. The organopolysiloxanes are disclosed in col. 2. The compositions may be in the form of water/oil emulsions in order to produce matting creams.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Mellul by substituting the crosslinked elastomeric solid organopolysiloxane of Bara for the silicone surfactant of Mellul because of the expectation of producing a cosmetic composition for matting the skin, blurring out skin relief blemishes such as microreliefs, wrinkles or pores, while giving the skin a natural appearance as taught by Bara.

7. Claims 1, 3-4, 11-21, 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellul et al. (US 5851539), and further in view of Kang et al. (KR 9202286- Abstract only).

Art Unit: 1615

Mellul discloses water-in-oil emulsions that comprise fluorocarbon oils, water and a silicone surfactant (see abstract). Mellul does not disclose the addition of an electrolyte.

Kang discloses a water/oil type cosmetic preparation comprising of (a) oil phase componenets which contain 1.0-10 parts of methyl polysiloxane glycol copolymer and 1-20 parts liquid phase oil (b) water-phase components with contain 60-90 parts of purified water, 2-20 parts multivalent alcohol and 0.1-2.0 parts of a water-soluble electrolyte. Electrolytes are known in the art to be used in emulsions in order to minimize the tendency of materials present in the oil phase to also dissolve in the water phase.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Mellul by adding an electrolyte as disclosed by Kang because of the expectation of obtaining a stabilized emulsion as taught by Kang.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-21, 23-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel M. Bennett whose telephone number is (703) 308-8779. The examiner can normally be reached on Monday through Friday, 8:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 309-7924 for After Final communications.

Art Unit: 1615

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

R. Bennett: RMB  
May 7, 2002

*PAU*

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600